

CENTER FOR BIOLOGICAL DIVERSITY,
KENTUCKY ENVIRONMENTAL
FOUNDATION, and SIERRA CLUB,

Plaintiffs,

v.

RURAL UTILITIES SERVICE, a federal agency within the United States Department of Agriculture,

Date: June 11, 2008
Time: 10:30 a.m.
Honorable Edward M. Chen
Courtroom C, 15th Floor

Defendant.

I, James Newby, do hereby declare as follows:

1. I am the Assistant Administrator of the United States Department of Agriculture, Rural Utilities Service ("RUS") Electric Program. As such, I am responsible for managing and directing the Electric Program that makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities to service consumers in rural areas in the United States.

2. RUS's headquarters are located at the United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250.

1 3. The Office of the Assistant Administrator for Electric Programs, RUS is located at RUS
2 headquarters in Washington, D.C.

3 4. The RUS Electric Program does not have any employees located in California. The RUS
4 Electric Program general field representative serving California is based in Rio Rancho, New Mexico.
5 The RUS Electric Program has a field accountant located in Frankfort, Kentucky and a general field
6 representative located in Lexington, Kentucky, both in counties covered by the Eastern District of
7 Kentucky (Franklin and Fayette Counties, respectively).

8 5. Since 1997, the RUS Electric Program has approved only four loans to California RUS
9 electric borrowers out of approximately 1,774 loans and loan guarantees made nationwide during that time
10 period.

11 6. The RUS Electric Program provides financing to borrowers engaged in electricity
12 generation and transmission, and also to borrowers engaged in electricity distribution. Generation and
13 transmission borrowers generate or otherwise supply electricity and transmit it to their member
14 distribution systems. The distribution borrowers provide electricity directly to retail consumers' homes
15 and businesses.

16 7. There are no generation and transmission borrowers located in California, out of 60 RUS
17 generation and transmission borrowers nationwide.

18 8. There are only three active electric distribution borrowers located in California out of 601
19 active electric distribution borrowers nationwide. The three active electric distribution borrowers do not
20 serve any of the counties covered by the Northern District of California (i.e., Alameda, Contra Costa, Del
21 Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San
22 Francisco, San Mateo, and Sonoma Counties, all as listed at 28 U.S.C. 84(a)). Seven other former
23 California electric distribution borrowers repaid in full their obligations to RUS as of December 31, 2006.

24 9. The environmental review and compliance work for the RUS Electric Program activities
25 is conducted by environmental protection specialists within RUS's Environmental Programs staff, located
26 at RUS headquarters in Washington, D.C.

27 10. The environmental assessment ("EA"), described in Plaintiffs' Complaint (¶ 16), for the
28 proposed J.K. Smith Generating Station natural gas-fueled combustion turbine generating units 9 and 10

1 and the Smith-West Garrard Electric Transmission Project, was overseen and independently reviewed
2 by environmental protection specialists within RUS's Environmental Programs staff, located at RUS
3 headquarters in Washington, D.C. The finding of no significant impact based upon the EA and described
4 in Plaintiffs Complaint (§ 27) was prepared and issued by RUS in Washington, D.C. Likewise, the
5 environmental impact statement ("EIS") for the proposed J.K. Smith Circulating Fluidized Bed
6 Generating Units, also described in Plaintiffs' Complaint (§ 33), is being and will be overseen and
7 independently reviewed by RUS personnel in Washington, D.C.

8 11. All RUS Electric Program loan and loan guarantee determinations to finance the
9 construction of electric distribution, transmission and generation facilities to service consumers in rural
10 areas in the United States are conducted at RUS headquarters in Washington, D.C.

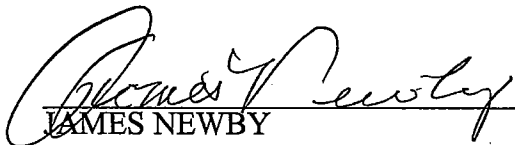
11 12. As of the date of this declaration, RUS Electric Program has not yet made any final
12 decisions about whether to provide financing for the projects described in the EA or EIS mentioned above
13 in paragraph 10. However, RUS Electric Program expects to make a financing decision very soon with
14 regard to the projects described in the EA. Any such financing decisions will be conducted by RUS's
15 Electric Program personnel at RUS headquarters in Washington, D.C.

16 13. Any financing documents that implement the RUS Electric Program financing decisions
17 will be prepared and executed by RUS Electric Program personnel at RUS headquarters in Washington,
18 D.C.

19 14. Records relating to the actions described in Plaintiff's Complaint are located at RUS
20 headquarters in Washington, D.C. There are no RUS records related to the challenged actions located
21 in California.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 24 day of April, 2008.

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25 
26 JAMES NEWBY
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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2008, I electronically filed the foregoing DEFENDANT'S DECLARATION OF JAMES NEWBY with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Marianne G Dugan
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Matthew D. Vespa
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Dated: April 30, 2008

/s/ Brian C. Toth
BRIAN C. TOTH
Attorney for Defendant Rural Utilities Service